

Surface Transportation Board, DOT

§1114.7

§1114.2 Official records.

An official record or an entry therein, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by a deputy, and accompanied with a certificate that such officer has the custody. If the office in which the record is kept is within the United States or within a territory or insular possession subject to the dominion of the United States, the certificate may be made by a judge of a court of record of the district or political subdivision in which the record is kept, authenticated by the seal of the court, or may be made by any public officer having a seal of office and having official duties in the district or political subdivision in which the record is kept, authenticated by the seal of his office. If the office in which the record is kept is in a foreign state or country, the certificate may be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by officer in the foreign service of the United States stationed in the foreign state or country in which the record is kept, and authenticated by the seal of his office. A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of this office contain no such record or entry. This section does not prevent the proof of official records or of entry or lack of entry therein or official notice thereof by a method authorized by any applicable statute or by the rules of evidence.

§1114.3 Admissibility of business records.

Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, will be admissible as evidence thereof if it appears that it was made in the regular course of business, and that it was the regular course of business to make such memorandum or record at the time such record was

made, or within a reasonable time thereafter.

§1114.4 Documents in Board's files.

If a party offers in evidence any matter contained in a report or other document open to public inspection in the files of the Board, such report or other document need not be made available at the hearing.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

§1114.5 Records in other Board proceedings.

If any portion of the record before the Board in any proceeding other than the proceeding at issue is offered in evidence, a true copy will be presented for the record.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

§1114.6 Official notice of corroborative material.

The Board or a hearing officer may take notice of official records, records in other Board proceedings, or other materials which are otherwise subject to specific rules governing admissibility regardless of compliance with the full technical provisions of such rules, where the admissibility of the evidence is for purposes of corroboration of testimony presented or to evaluate the credibility of testimony or allegations made in proceedings where the public interest is not otherwise adequately represented by counsel capable of fully complying with such rules.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

§1114.7 Exhibits.

Whenever practical the sheets of each exhibit and the lines of each sheet should be numbered. If the exhibit consists of five or more sheets, the first sheet or title-page should be confined to a brief statement of what the exhibit purports to show with reference by sheet and line to illustrative or typical examples contained therein. The exhibit should bear an identifying number, letter, or short title which will readily distinguish it from other exhibits offered by the same party. It is

desirable that, whenever practicable, evidence should be condensed into tables. Whenever practicable, especially in proceedings in which it is likely that many documents will be offered, all the documents produced by a single witness should be assembled and bound together, suitably arranged and indexed, so that they may be identified and offered as one exhibit. Exhibits should not be argumentative and should be limited to statements of facts, and be relevant and material to the issue, which can better be shown in that form than by oral testimony.

[47 FR 49562, Nov. 1, 1982, as amended at 61 FR 52713, Oct. 8, 1996]

Subpart B—Discovery

§1114.21 Applicability; general provisions.

(a) *When discovery is available.* (1) Parties may obtain discovery under this subpart regarding any matter, not privileged, which is relevant to the subject matter involved in a proceeding other than an informal proceeding. For the purpose of this subchapter, informal proceedings are those not required to be determined on the record after hearing and include informal complaints and all proceedings assigned for initial disposition to employee boards under §1011.6.

(2) It is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) *How discovery is obtained.* All discovery procedures may be used by parties without filing a petition and obtaining prior Board approval.

(c) *Protective conditions.* Upon motion by any party, by the person from whom discovery is sought, or by any person with a reasonable interest in the data, information, or material sought to be discovered and for good cause shown, any order which justice requires may be entered to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, or to prevent the raising of issues untimely or inappropriate to the proceeding. Relief through a protective

order may include one or more of the following:

- (1) That the discovery not be had;
- (2) That the discovery may be had only on specified terms and conditions, including a designation of the time and place;
- (3) That the discovery may be had only upon such terms and conditions as the Board may impose to insure financial responsibility indemnifying the party or person against whom discovery is sought to cover the reasonable expenses incurred;
- (4) That the discovery may be had only by a method other than that selected by the party seeking discovery;
- (5) That certain matters not be inquired into or that the scope of discovery be limited to certain matters;
- (6) That discovery be conducted with no one present except persons designated in the protective order;
- (7) That a deposition after being sealed be opened only by order of the Board;
- (8) That a trade secret or other confidential research development or commercial information not be disclosed or be disclosed only in a designated way; and
- (9) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened only upon direction or order of the Board.

If the motion for a protective order is denied in whole or in part, the Board may, on such terms and conditions as it deems just, enter an order requiring any party or person to provide or permit discovery. A protective order under this paragraph may only be sought after, or in conjunction with, an effort by any party to obtain relief under §§1114.24(a), 1114.26(a), or 1114.31.

(d) *Sequence and timing of discovery.* Unless the Board upon motion, for the convenience of parties and witnesses and in the interest of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, should not operate to delay any party's discovery.

(e) *Stipulations regarding discovery.* Unless otherwise ordered, a written